

[JOINT COMMITTEE PRINT]

DESCRIPTION OF S. 528
(THE EDUCATIONAL OPPORTUNITY AND
EQUITY ACT OF 1983)
RELATING TO
TAX CREDIT FOR TUITION EXPENSES

SCHEDULED FOR A HEARING
BEFORE THE
COMMITTEE ON FINANCE

ON
APRIL 28, 1983

PREPARED FOR THE USE OF THE
COMMITTEE ON FINANCE
BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The Senate Committee on Finance has scheduled a public hearing on S. 528, the Educational Opportunity and Equity Act of 1983 (introduced by Senators Dole, Packwood, Moynihan, Roth, and D'Amato), relating to tax credits for private elementary and secondary education expenses.

This pamphlet, prepared in connection with the hearing, has four parts. The first part is a summary of present law and the bill. Part two describes present law. Part three discusses prior Congressional action relating to tuition tax benefits. Part four provides a detailed description of the provisions of S. 528, including effective date and estimated revenue effect.

I. SUMMARY

Present law provides no tax credit or deduction for personal educational expenses. However, in certain cases, taxpayers are entitled to a personal exemption for a dependent, which they could not claim otherwise, because the dependent is a student. Moreover, individuals generally may exclude from gross income amounts received as scholarships and fellowships, or amounts received under qualified educational assistance programs. Finally, certain types of "job-related" education expenses may be deducted.

The bill would provide a nonrefundable credit for 50 percent of tuition expenses paid to private elementary and secondary schools for certain qualified dependents of the taxpayer. The maximum credit per dependent would be \$100 in 1983, \$200 in 1984, and \$300 in 1985 and subsequent years. The maximum credit amount would be phased down for taxpayers with adjusted gross incomes of greater than \$40,000 and no credit would be allowed for taxpayers with adjusted gross incomes of \$60,000 or more.

For tuition expenses to be creditable, a school could not follow a racially discriminatory policy. An eligible school (*i.e.*, a school that is exempt from taxation under Code sec. 501(a) as an organization described in Code sec. 501(c)(3)) would be required to include a statement of its nondiscriminatory policy in any published by-laws, admissions materials, and advertising, and to file annually with the Treasury Department a statement that it has not followed a racially discriminatory policy. Generally, a copy of this statement also would have to be furnished to each individual who pays tuition to the school and be attached to any return on which credits are claimed. In addition, the bill would disallow credits for payments to any school found to be following a racially discriminatory policy in an action brought by the Attorney General under the bill's declaratory judgment provisions.

The bill generally would apply to tuition paid or incurred after July 31, 1983, for taxable years beginning after December 31, 1982; however, no credits would be allowed until either a final decision by the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under section 501(a) of the Internal Revenue Code by reason of section 501(c)(3) to private educational institutions that maintain a racially discriminatory policy or practice as to students. Credits would be effective on a prospective basis after such final decision or Act of Congress.

II. PRESENT LAW

Tax Benefits for Educational Expenses

Special rule for claiming dependency exemption for a child who is a student

In certain cases, taxpayers are entitled to a personal exemption for a dependent, which they otherwise could not claim, because the dependent is a student. Generally, a taxpayer may claim a \$1,000 personal exemption for each dependent who has less than \$1,000 gross income for a taxable year. However, the gross income limitation does not apply if the dependent is the taxpayer's child and is under the age of 19 or is a student (Code sec. 151).

Income tax exclusion for scholarships and fellowships

Individuals generally may exclude from income amounts received as scholarships and fellowships (Code sec. 117). The exclusion also covers incidental amounts received to cover expenses for travel, research, clerical help, and equipment when they are expended for these purposes. The exclusion for scholarships and fellowship grants is restricted to educational grants by relatively disinterested grantors who do not require any significant consideration (e.g., promises of future services) from the recipient, except in the case of certain Federal grants. Similarly, where an educational institution allows delayed payment of tuition, the Internal Revenue Service regards tuition postponement to be a loan and, therefore, not includible as income to the student (Rev. Rul. 72-2, 1972-1 C.B. 19).

Deduction for "job-related" educational expenses

Education expenses which qualify as trade or business expenses under Code section 162 may be deducted. Expenditures made by an individual for his own education generally are deductible if they are for education which (1) maintains or improves skills required by the individual's employment or other trade or business or (2) meets the express requirements of the individual's employer or the requirements of applicable law or regulations imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation (Treas. Reg. sec. 1.162-5(a)). These types of education commonly are called "job-related" education.

Income tax exclusion for amounts received under educational assistance programs

For taxable years beginning after December 31, 1978, and before December 31, 1983, amounts paid by an employer for an employee's educational expenses may be excluded from the employee's income

if paid pursuant to a qualified educational assistance program (Code sec. 127). A qualified educational assistance program must be a separate written plan of an employer for the exclusive benefit of employees. The plan also must meet requirements with respect to nondiscrimination in contributions or benefits and in eligibility for enrollment, but it need not be funded or approved in advance by the Internal Revenue Service. For a program to qualify, the employees must be given adequate notification and must not be able to choose taxable benefits in lieu of the educational assistance.

Benefits which may be provided under the program include tuition, fees, and similar payments, books, supplies, and equipment. Covered studies need not be restricted to courses which are job-related or part of a degree program.¹ However, an employee claiming an exclusion under this section may not claim any other deduction or credit (e.g., a Code sec. 162 deduction for job-related education) with respect to any excludible benefits.

Other tax provisions of benefit to education

Some provisions that benefit education, in general, and sometimes students, in particular, include the exclusion from income of gifts (Code sec. 102), which may comprise a large portion of a student's educational expenses and the charitable contribution deduction (Code sec. 170), which allows a deduction for charitable contributions (not tuition payments) to educational institutions. Other provisions, such as the exclusion of interest on State and municipal bonds (Code sec. 103) and the deduction for State and local taxes (Code sec. 164) indirectly assist publicly-supported educational institutions by easing the financial burden of State and local governments.

Effect of Racial Discrimination on Tax-Exempt Status of Private Schools

The Internal Revenue Service issued a revenue ruling and a revenue procedure,² in 1971 and 1972, respectively, which state that private schools with racially discriminatory policies as to students will not be recognized as organizations exempt from Federal income tax. These documents also set forth guidelines for determining whether certain private schools have adequately publicized their racially nondiscriminatory policies so as to enable them to qualify for tax-exempt status.

In 1975, the IRS published Revenue Procedure 75-50, 1975-2 C.B. 587, which sets forth guidelines and recordkeeping requirements for determining whether private schools have racially nondiscriminatory policies. This revenue procedure superseded Rev. Proc. 72-54, *supra*.

In general, the 1975 guidelines provide that to obtain recognition of tax-exempt status under section 501(c)(3):

- (1) A school must include a statement in its charter, by-laws, or other governing instrument, or in a resolution of its govern-

¹ Generally, however, no exclusion is permitted for educational assistance furnished for courses involving sports, games, or hobbies.

² Rev. Rul. 71-447, 1971-2 C.B. 230 and Rev. Proc. 72-54, 1972-2 C.B. 834. These documents were issued in response to *Green v. Connally*, 330 F. Supp. 1150 (D.D.C.) *aff'd per curiam sub nom. Coit v. Green*, 404 U.S. 997 (1971), which held that racially discriminatory private schools are not entitled to the Federal tax exemptions provided for educational organizations and that gifts to such schools are not deductible as charitable contributions by the donors.

ing body, that it has a racially nondiscriminatory policy as to students and, therefore, does not discriminate against applicants;

(2) the school must include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships;

(3) the school must make its racially nondiscriminatory policy known to all segments of the general community served by the school;

(4) the school must be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner; and

(5) as a general rule, all scholarships or other comparable benefits procurable for use at the school must be offered on a racially nondiscriminatory basis. Their availability on this basis must be made known throughout the general community being served by the school and should be referred to in the publicity necessary to satisfy the third requirement in order for that school to be considered racially nondiscriminatory as to students.

This revenue procedure also requires that an individual authorized to act officially on behalf of a school which claims to be racially nondiscriminatory as to students must certify annually, under penalties of perjury, that to the best of his knowledge and belief the school has satisfied the requirements listed in the procedure.

The 1975 revenue procedure further provides that the existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students, while, conversely, the absence of racial discrimination in employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students. Failure to comply with the guidelines set forth in Revenue Procedure 75-50 ordinarily results in the proposed revocation of the tax-exempt status of a school.

Through provisions enacted as part of annual appropriations legislation, the Congress has, at various times in the past, forbidden the Internal Revenue Service from developing or carrying out any rulings, procedures, or other positions concerning tax exemption for racially discriminatory private schools beyond those that were in effect prior to August 22, 1978.³

The issue of whether schools with racially discriminatory policies may qualify for tax-exempt status currently is pending before the U.S. Supreme Court in the cases of *Goldsboro Christian Schools, Inc. v. United States* (No. 81-1) and *Bob Jones University v. United States* (No. 81-3).

³ This prohibition originally was enacted in response to the fact that on August 21, 1978, the Internal Revenue Service proposed publication of a revenue procedure intended to revise administrative guidelines for determining whether a private school operates in a racially discriminatory manner. As a result of the reopening of litigation in *Green v. Connally*, supra, and *Wright v. Miller*, 480 F. Supp. 790 (D.D.C. 1979), rev'd sub nom. *Wright v. Regan*, 656 F. 2d 820 (D.C. Cir. 1981), the IRS had concluded that its prior revenue procedures had not been effective in identifying schools that were racially discriminatory even though they had professed an open enrollment policy and had complied with the requirements of Revenue Procedure 75-50.

III. PRIOR CONGRESSIONAL ACTION

In the 1950's, tax deductions from adjusted gross income for some portion of college expenses and an additional personal exemption for each student were the most common legislative proposals for tax relief for educational expenses. In the 1960's, tax credit proposals became popular. From 1967 to 1977, six education tax credit proposals passed the Senate, but none was ever approved by the House of Representatives. As noted below, different tuition tax credit proposals passed both the House and Senate in 1978.

1977 Legislation

The Social Security Financing Amendments of 1977, as passed by the Senate, contained an amendment, known as the "Roth amendment," to provide a tax credit for certain educational expenses. This amendment was deleted from the bill by the conferees.

The 1977 amendment would have allowed a tax credit for educational expenses paid by an individual for himself, his spouse, or his dependents. The credit would have covered 100 percent of the eligible educational expenses at institutions of higher education (but not graduate schools) or postsecondary vocational schools, up to a maximum of \$250 for any one individual. This credit would have been refundable only for the first year that it was effective.

1978 Legislation

In February 1978, the Senate Finance Committee reported a House-passed tariff bill with an amendment providing a refundable credit for tuition and fees paid for undergraduate college and postsecondary vocational school expenses after August 1, 1978, and for elementary and secondary school expenses after August 1, 1980. On August 1, 1981, this credit would have been extended to the educational expenses of graduate students and part-time students. The credit would have been for an amount equal to 50 percent of tuition and fees, with a maximum credit of \$250 per-student per-year as of August 1, 1978, increasing to a maximum of \$500 per student on August 1, 1980. This bill was never considered on the Senate floor.

The House Ways and Means Committee, in April, 1978, reported a bill (the "Tuition Tax Credit Act of 1978") that would have provided a nonrefundable credit equal to 25 percent of the tuition paid by the taxpayer to one or more eligible educational institutions for himself, his spouse, or any of his dependents.¹

This credit would have been available only for tuition paid to undergraduate institutions of higher education and postsecondary vocational schools. The maximum credit would have been \$100 for 1978, \$150 for 1979, and \$250 for 1980.

¹ H.R. Rep. No. 95-1056, 95th Cong., 2d Sess. (1978).

The House amended this bill to provide a credit, with the same limits applicable to tuition paid to undergraduate institutions, for graduate postsecondary expenses. In addition, the bill was amended to provide a credit for expenses paid to elementary and secondary schools. The maximum credit for elementary and secondary school expenses would have been \$50 for 1978, \$100 for 1979, and \$100 for 1980.

The Senate Finance Committee, in August 1978, reported the House-passed bill with amendments (the "Tuition Tax Relief Act of 1978").² This bill would have provided a nonrefundable credit for an amount equal to 50 percent of the educational expenses paid by the taxpayer during the taxable year. Beginning August 1, 1978, the maximum credit for undergraduate college or postsecondary vocational school expenses would have been \$250. This amount would have increased to \$500 on October 1, 1980. In addition, the credit would have been expanded to cover students in private elementary and secondary schools (including vocational secondary schools) and half-time undergraduate students, as of October 1, 1981. The maximum credit for elementary and secondary school expenses would have been \$250. The Senate amended this bill by deleting coverage for elementary and secondary school expenses and by providing that no credit would be allowed after December 31, 1983.

On October 3, 1978, the Conference Committee reported a bill that would have provided a credit equal to 35 percent of tuition paid to institutions of higher education and postsecondary vocational schools.³ The maximum credit allowed under this proposal would have been \$100 for 1978, \$150 for 1979, \$250 for 1980, and \$250 for 1981. The House rejected this proposal, and the Conference Committee submitted a second report that, in addition to a credit for higher education expenses, would have allowed a credit for secondary education expenses (a maximum credit of \$50 in 1978, \$100 in 1979, \$100 in 1980, and \$100 in 1981).⁴ This proposal was rejected by the Senate.

96th Congress

Although there were several bills providing for tuition tax credits introduced in the 96th Congress, no legislative action was taken on them.

97th Congress

In the 97th Congress, the Senate Committee on Finance reported a bill similar to S. 528 (see, S. Rep. No. 97-576, 97th Cong., 2d. Sess. (1982)). That bill (H.R. 1635) differed from S. 528 in that it would have provided no credit for tuition paid to a school having an admissions policy that discriminated against handicapped children, or attendance at which did not satisfy State compulsory attendance laws. In addition, no credit would have been allowed for taxpayers with adjusted gross income of \$50,000 or more (rather than \$60,000 or more).

² S. Rep. No. 95-1066, 95th Cong., 2d Sess. (1978).

³ H.R. Rep. No. 95-1682, 95th Cong., 2d Sess. (1978). A similar provision was contained in the Senate version of the Revenue Act of 1978, but was deleted in conference. (See, H.R. Rep. No. 95-1800, 95th Cong., 2d Sess. (1978).)

⁴ H.R. Rep. No. 95-1790, 95th Cong., 2d Sess. (1978).

IV. DESCRIPTION OF THE BILL

A. General Provisions

Congressional findings

The bill contains a policy statement that sets forth propositions that are based upon a Congressional finding that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. This policy statement concludes that the primary purpose of the bill would be to enhance equality of educational opportunity, diversity, and choice for Americans.

Credit for tuition expenses

Under the bill, an individual would be allowed to claim a nonrefundable tax credit for 50 percent of certain tuition expenses paid during the taxable year to one or more eligible private educational institutions. Credits would be allowed only with respect to tuition paid for certain dependents who are under age 20 at the close of the taxable year in which the expenses are paid and with respect to whom the individual is permitted to claim dependency exemptions. Provided that over half of his or her support is received from the taxpayer, the payment of tuition expenses for (1) a son or daughter or a descendant of either, (2) a stepson or stepdaughter, (3) a brother, sister, stepbrother, or stepsister, (4) a son or daughter of a brother or sister, or (5) an individual (other than the taxpayer's spouse) who has as his or her principal place of abode the home of the taxpayer and who is a member of the taxpayer's household, would qualify for the credit. Except for the taxpayer's children, these individuals would be required to have less than \$1,000 of gross income for the calendar year in order to be claimed as dependents.

Eligible educational institutions and qualified tuition expenses

The credit would be available only with respect to tuition paid to certain educational institutions. An educational institution would be required to meet the following requirements in order for tuition paid to it to be a creditable expense:

- (1) It must provide a full-time program of elementary or secondary education;
- (2) It must be a privately operated, not-for-profit, day or residential school; and
- (3) It must be exempt from taxation under Code section 501(a) as an organization described in section 501(c)(3).¹ (This includes

¹ These are organizations that are organized and operated exclusively for religious, charitable, educational, or other enumerated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which meet certain other specified requirements.

church-operated schools that currently are exempt from the requirement that applications for recognition of tax-exempt status be filed with the Internal Revenue Service.)

While the bill would not require a private school to have by-laws, advertisements, admission application forms, or other such publications, if an institution does have any such publications they would be required to include a statement that the institution does not discriminate against applicants or students on the basis of race. The form or manner for making this statement is to be prescribed by Treasury Regulations.

Tuition expenses eligible for the credit would be tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses. However, amounts paid for (1) books, supplies, and equipment for courses of instruction; (2) meals, lodging, transportation, or personal living expenses; (3) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; and (4) education beyond the twelfth-grade level would not be eligible for the credit.

Limitations on credit amount

The credit would be subject both to a maximum dollar amount and a limitation based upon the amount of a taxpayer's adjusted gross income. Both the maximum dollar amount of the credit and the maximum income limitation would be phased in over a three-year period.

The maximum credit allowable to a taxpayer with respect to tuition expenses paid on behalf of each dependent would be:

- (1) \$100 in the case of tuition expenses paid or incurred after July 31, 1983, in taxable years beginning in 1983;
- (2) \$200 in the case of tuition expenses paid or incurred in taxable years beginning in 1984; and
- (3) \$300 in the case of tuition expenses paid or incurred in taxable years beginning in 1985 or later.

A special rule would provide that any tuition tax credits available to any taxpayer could not be taken into account in determining the estimated tax of a taxpayer for any taxable year beginning before January 1, 1984, or in determining the number of withholding exemptions to which any taxpayer would be entitled with respect to remuneration paid before January 1, 1984.

The maximum credit amount would be reduced by a specified percentage of the amount by which a taxpayer's adjusted gross income for the taxable year exceeds \$40,000 (\$20,000 in the case of a married individual filing a separate return). The phase-out rate would be .5 percent for taxable years beginning in 1983; 1.0 percent for taxable years beginning in 1984, and 1.5 percent for taxable years beginning in 1985 and thereafter. These percentage phase-out rates would be doubled for married individuals filing separate returns. Thus, for taxable years beginning in 1985, a taxpayer with adjusted gross income of \$60,000 or more (\$30,000 in the case of a married individual filing a separate return) would receive no tax credit.

Special rules

Under the bill, otherwise eligible tuition expenses would be reduced by certain amounts paid to the taxpayer or his dependents. These amounts are: (1) amounts received from tax-free scholarships or fellowship grants; (2) certain Veterans' benefits; and (3) other tax-exempt educational financial assistance (except for excluded gifts, bequests, devises, or inheritances). If the scholarship is paid directly to the school and the school sends a bill for tuition to the taxpayer that is net of the scholarship, the taxpayer would not be deemed to have been paid the scholarship; the scholarship would be excluded from the computation of tuition expense.

B. Anti-discrimination Provisions

Overview

No tax credit would be permitted for tuition payments to schools that follow racially discriminatory policies. The bill would define the term "race" to include color or national origin.

Under the bill, an educational institution would be treated as following a racially discriminatory policy if it refused, on account of race: (1) to admit applicants as students; (2) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or (3) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy would not include failure to pursue or achieve any racial quota, proportion, or representation in the student body.

Required publication of nondiscriminatory policy and report to Treasury Department

Eligible schools would be required to include a statement of non-discriminatory policy in all published by-laws, application forms, advertising, or other such published documents.

The bill would also require a school to file annually with the Treasury Department a statement declaring that it had not followed a racially discriminatory policy and indicating whether a judgment declaring that the school had followed a racially discriminatory policy was in effect. The statement would have to indicate whether the school had complied with the requirement that it include a statement of nondiscriminatory policy in its published by-laws, application forms, advertising, etc. Additionally, a copy of the nondiscrimination statement would generally have to be furnished to each person paying tuition to the school. A copy of the statement would have to be attached to the tax return of each person claiming a credit for tuition paid to the school.

Enforcement proceedings

Under the bill, the Attorney General would be responsible for determining whether a school followed a racially discriminatory policy.² The Attorney General would be authorized and directed to

²The bill, as printed, contains a typographical error on page 6, line 7. The correct text of the bill, as introduced on February 17, 1983, appears on page S1336 of the Congressional Record for that day.

seek a declaratory judgment against a school after receiving a written allegation of discrimination filed by a complainant against the school and finding good cause. This written allegation would be required to allege with specificity that (1) the school had committed a racially discriminatory act against a student applicant or student within one year preceding the date on which the allegation was made, or (2) that the school had made a communication within one year preceding the date on which the allegation was made, expressing that the school follows a racially discriminatory policy.

The Attorney General would be required, upon receipt of a written allegation, promptly to notify the school, in writing, of the existence of the allegation. Before commencing a declaratory judgment proceeding, the Attorney General also would be required to give the school a fair opportunity to comment on the allegations made against it by the complainant and to show that the racially discriminatory policy alleged in the written allegation either did not exist or had been abandoned.

If the Attorney General decided not to seek a declaratory judgment against the school, he would be required to make available to the complainant the information on which he based his decision, including any relevant information submitted by the school. He would not be required or authorized, however, to make available any information the disclosure of which would violate any Federal or State law protecting personal privacy or confidentiality.

Instead of seeking a declaratory judgment, the Attorney General could, in his discretion, enter into a settlement agreement with a school against which an allegation of discrimination had been made. However, before doing so, the Attorney General would be required to find that the school had been acting in good faith and had abandoned its racially discriminatory policy. A copy of any settlement agreement would be required to be furnished to the complainant whose allegations resulted in the Attorney General's investigation. If the school violated the settlement agreement, then no subsequent allegation would need to be filed before the Attorney General could initiate a declaratory judgment proceeding or commence a proceeding to enforce the terms of the settlement.

Attorneys' fees

The bill would authorize the district court to award costs and reasonable attorneys' fees to a school prevailing in a declaratory judgment proceeding brought by the Attorney General.

Discontinuance of racially discriminatory policy

The bill provides that a school against which a declaratory judgment had been rendered could, at any time after one year from the date of the judgment, file with the district court a motion to modify the judgment to include a declaration that the school no longer followed a racially discriminatory policy. The motion by the school would be granted, and tuition paid to the school that is otherwise qualified would again become eligible for tax credits, unless the Attorney General established that the declaration by the school was false, or that the school had, within the preceding year, (1) committed a racially discriminatory act against a student or applicant, (2) communicated that it followed a discriminatory policy, or (3) en-

gaged in a pattern of conduct to implement such a racially discriminatory policy.

Period of disallowance of tax credits

No credits would be allowed for amounts paid to a school during the period in which a declaratory judgment against the school was in effect. Generally, a declaratory judgment would be effective beginning with the calendar year in which it was entered by the district court, whether or not it was appealed. The period of disallowance would end only if a motion to reinstate credits was granted by the district court. In that event, credits would again be allowed beginning with the year the motion was granted by the district court, whether or not that motion was appealed.

Annual report by Attorney General

The bill would require the Attorney General to make an annual report to the Congress on his activities regarding enforcement of the anti-discrimination provisions.

Credit not to be considered as Federal assistance

The bill provides that tuition tax credits would not constitute Federal financial assistance to educational institutions or the recipients thereof.

C. Effective Date

The bill generally would be effective for tuition payments made after July 31, 1983. However, no credits would be allowable until either a final decision of the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under Code section 501(a) by reason of section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

D. Revenue Effect

It is estimated that the bill would reduce budget receipts by \$245 million in fiscal year 1984, \$526 million in fiscal year 1985, \$753 million in fiscal year 1986, \$779 million in fiscal year 1987, and \$763 million in fiscal year 1988.